

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9423 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
2. To be referred to the Reporter or not? Yes :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
5. Whether it is to be circulated to the Civil Judge? No :

BHAILALBHAI MATHURBHAI PATEL
VERSUS
THE STATE OF GUJARAT & ORS

Appearance:

Mr.JANAK C. VYAS for petitioners
Ms.Harshaben Devani, A.G.P. for Respondent Nos.1 & 2
Mr.Sheetal R. Patel for respondents No.3 to 8
Mr.M.K.Purohit for Respondents No.9 to 18
Mr.A.J.Patel for respondent No.20

CORAM : MR.JUSTICE D.C.SRIVASTAVA
Date of decision: 05/11/1999

C.A.V. JUDGEMENT

The prayer of the petitioners in this petition is for a direction to declare that the impugned order dated 24.4.1995, Annexure : D, of the respondent No.2 is bad

and illegal and any transaction which has taken place between respondents No.3 to 8 and the respondents No.9 to 18 pursuant to the said order is also illegal.

2. Brief facts giving rise to this petition are as under :

The petitioners have challenged mainly the action of the respondent No.2 contained in Order dated 24.4.1995 granting permission to the respondents No.3 to 8 under Section 63 of the Bombay Tenancy Act (for short "the Act). Under the said order the respondent No.2 had granted permission to the respondents No.3 to 8 to sell the land in question in favour of the respondents No.9 to 18 for their residential purpose. This order is said to be illegal and is liable to be quashed for the reasons that this order was obtained by the respondents No.3 to 8 by deliberately suppressing the fact that R.T.S. proceedings were going on between them and the petitioners and that the petitioners obtained stay order from the competent Court which is operating. The land of survey No.288/1 situated in village Thaltej, originally belonged to the petitioners. With respect to sale transaction between the petitioners and the respondents No.3 & 4, the respondent No.19 issued notice dated 21.4.1993 under Sec.84(c) of the Act. It was found by the respondent No.19 that there appeared to be violation of the provisions of the Bombay Tenancy and Agricultural Lands in the aforesaid sale transaction dated 13.12.1989. Requisite inquiry was made in the matter and the respondent No.19 passed order dated 8.2.1994 that there was no violation of Section 63 of the Bombay Tenancy Act. Accordingly the notice was withdrawn. Annexure : A is copy of notice dated 21.4.1993 and Annexure : B is the copy of order dated 8.2.1994 dropping the proceedings under Section 84(c) of the Act. The petitioners feeling aggrieved from the aforesaid order of the respondent No.19 preferred an Appeal under Sec.74 of the Act before the Deputy Collector who dismissed the Appeal on 30.7.1994 vide Annexure : C. Feeling further aggrieved from this order the petitioners preferred Revision Application before the Gujarat Revenue Tribunal which is pending and interim order was passed by the Tribunal directing status-quo to be maintained. Interim order is still operating and the revision is still pending. In view of pendency of this revision before the Tribunal the stand of the petitioners is that the R.T.S. proceedings have not been concluded. It is alleged that the respondents No.3 to 8 suppressing material fact that revision arising out of R.T.S. proceeding is pending moved an application under Sec.63 of the Act for selling

the land to respondents No.9 to 18 for residential purpose. Not only this, the interim order passed by the Tribunal was also concealed by the aforesaid respondents. As such the order of the respondent No.2 is said to be illegal and the permission granted to the respondents No.3 to 8 to sell the land to the respondents No.9 to 18 is also illegal. It is further alleged that it was obligatory upon the respondent No.2 to ascertain latest position of such R.T.S. proceeding and without ascertaining these facts the impugned order of the respondent No.2 was passed mechanically which is rendered illegal. In pursuance of the permission granted on 24.4.1995 by the respondent No.2, the respondents No.3 to 8 have executed sale deed in favour of respondents No.9 to 18 and after purchasing the land the respondents No.9 to 18 proceeded to put up construction over the land.

3. The stand of the respondents flowing from the counter Affidavit of the respondent No.10 is firstly that the petitioners have alternative remedy by way of revision against the impugned order of the respondent No.2. Further, the petitioners having accepted the sale consideration of the sale Deed executed on 1.2.1989 and registered on 13.6.1990 have lost their title in the property hence the present petition is not maintainable. Further, the respondents No.9 to 18 purchased the land through Sale Deed dated 14.8.1995 and these respondents applied for permission to make nine sub-plots and also for permission to make construction on the said sub-plots to Ahmedabad Urban Development Authority (for short "AUDA"). On 18.4.1996. The AUDA sanctioned plans for sub-plotting as well as for construction and thereafter construction was started. These respondents entered into an Agreement with Devendra Chunilal Patel, Chief Promotor of Palm Beach Co.Operative Housing Society on 26.6.1996. It is a registered Society. The agreement was registered. Palm Beach Co.Operative Society was subsequently made respondent No.20. The respondents No.9 to 18 applied before the Competent Authority for No Objection Certificate. It is also pleaded that the writ petition suffers from the vice of laches inasmuch as the order dated 24.4.1995 was challenged after about one year.

4. Learned Counsel for the petitioner Shri J.C.Vyas, Ms.Harshaben Devani for respondent No.1 and Shri A.J.Patel for remaining respondents were heard and the entire material on record was examined.

5. Regarding preliminary objections raised by Shri A.J.Patel, the contention of Shri J.C.Vyas has been that

since the petition was admitted on 23.12.1996 after hearing the learned Counsel for the parties it will be deemed that these preliminary objections were not accepted by the Court and hence these preliminary objections cannot be permitted to be raised now. It is true that the petition was admitted on 23.12.1996 after hearing the learned counsel for the parties, but so far as objection regarding petitioners' title in the property is concerned it can be seen even after admission of this writ petition. Admittedly the property was first sold by the petitioners to the respondents No.3 & 4 on 1.2.1989 and thereafter these two respondents sold the property to respondents No.9 to 18 through Sale Deed dated 14.8.1995. From the counter Affidavit of respondent No.10 it is clear that these Sale Deeds were registered documents. There is no allegation that these documents were executed without consideration. Thus, the Sale Deed in favour of the respondents No.3 & 4 by the petitioners cannot be doubted. It is admitted by the petitioners that they received consideration from the respondents No.3 & 4. If this is so then the petitioners obviously lost their title and interest in the land in question after executing Sale Deed dated 1.2.1989 which was registered on 13.6.1990. If the petitioners have no title and interest in the property they have no right to challenge the impugned order. The impugned order could have been challenged by the State Government and not by the petitioners. In this view of the matter one of the preliminary objections succeeds hence the petitioners are not entitled to any relief.

6. So far as remaining two objections are concerned, namely, alternative remedy being available to the petitioners and the laches on the part of the petitioners in filing this writ petition it can safely be said that since these objections were contained in the counter Affidavit and the petition was admitted after hearing the learned Counsel for the parties and examining the affidavit and counter Affidavit it will be deemed that these two objections were not accepted by this Court at the time of admission of the writ petition. Consequently these objections cannot be permitted to be raised now at the time of argument. Even otherwise since the entire matter has been heard and examined on merits the writ petition need not be dismissed on these two technical grounds and preliminary objections.

7. Coming to the merits of the case the two sets of litigations have to be separately considered and examined. One set of litigation is in the nature of R.T.S. proceeding arising out of notice dated 21.4.1993

under Sec.84(c) of the Act. The other set of litigation arose out of application for permission under Sec.63 of the Act moved by the respondents No.3 & 4 on 24.4.1995 seeking permission to sell the land to the respondents No.9 to 18. In this writ petition the petitioner is mainly aggrieved with the order of the respondent No.2 dated 24.4.1995 granting permission under Sec.63 to the respondents No.3 & 4 to sell the land to the respondents No.9 to 18. Thus, in effect the grievance of the petitioner is that the order under Sec.63 of the Act is illegal. Illegality is alleged for two reasons, the first is that the order was passed mechanically and that no effort was made by the Authority in finding out the real stage where R.T.S. proceedings under Sec.84 (c) of the Act were pending and secondly this order was passed due to active concealment on the part of the respondents No.3 & 4 that R.T.S. proceedings were pending before the Gujarat Revenue Tribunal which had passed order to maintain status-quo in a revision filed by the petitioners.

8. So far as R.T.S. proceedings under Sec.84(c) of the Act are concerned notice dated 21.4.1993 was issued by the Mamlatdar under the aforesaid section. The Mamlatdar under his order dated 8.2.1994 came to the conclusion that there was no violation of Section 63 of the Bombay Tenancy Act. Accordingly notice given u/s.84(c) of the Act was withdrawn and the proceedings were dropped. It, therefore, means that the Mamlatdar was of the view that the Sale Deed executed by the petitioners in favour of the respondents No.3 & 4 was valid. Thus, this was in effect an order in favour of the petitioners. Still, being aggrieved from this order of the Mamlatdar the petitioners filed Appeal before the Deputy Collector and the Deputy Collector on the ground of locus-standi dismissed the Appeal. The Deputy Collector observed that since the petitioners sold the land through registered Sale Deed after receiving total consideration they have no locus-standi for filing the Appeal. Technically, since the Appeal of the petitioner was dismissed by the Deputy Collector they have right to file revision before the Gujarat Revenue Tribunal. The said revision was filed and is still pending disposal. The plea of locus-standi to file revision will be considered by the Revisional Authority while hearing the revision pending before it. However, the plea of locus-standi of the petitioner to file this writ petition can be considered by this Court in view of the verdict of this Court in RATNAPRABHABAI v/s. M/S. TULSIDAS V. PATEL, reported in 1982 (2) G.L.R. 213. This case applies with full force to the facts of this case. The

facts of that case were identical to the facts of the case before me. In that case admitted position was that the petitioner had not initiated any proceedings under Sec.84(c) nor she challenged the transaction by which she herself had sold the land in question in 1961 to respondent No.1 after taking Rs.1 lac. It was the Mamlatdar who initiated suo-motu proceedings in 1974. In the case before me also the petitioners did not approach the Mamlatdar rather the Mamlatdar initiated suo-motu proceedings. Suo-motu proceedings were dropped in that case also and in the case before me suo-motu proceedings were dropped finding that there was no violation of Section 63 of the Act. The Court in that case posed a question how the party in whose favour such decision is rendered by the Mamlatdar is alleging to be an aggrieved party. The State of Gujarat did not challenge the order of the Mamlatdar in that case so also in this case. The State of Gujarat would have been proper party which could have felt aggrieved, if at all, by the order of the Mamlatdar. On these facts the Court observed in RATNAPRABHA'S case (Supra) that it is difficult to appreciate how the petitioners, original vendor of the lands felt aggrieved by the decision of the Mamlatdar who had refused to set aside petitioner's sale transaction in favour of the purchaser. The Court further proceeded to observe that it appears that the petitioners having pocketed Rs.one lac years back in 1962 is trying to catch at a straw and is practically indulging in the policy of dog in the manger by seeing that the hanging sword of the present litigation lingers on so that at some future time respondents may come round and may give some added financial advantage to the petitioner by way of bargain, and if the present proceedings are kept pending, such oblique intention of the petitioner may get fructified. The court obviously cannot be a party to such a design. When the petitioner is not a legally aggrieved party, it is impossible to give her any relief in the present proceedings under Art.227 of the Constitution. (Emphasis supplied).

In view of this decision, which is fully applicable to the facts of the case before me, it can be said that the petitioners cannot be granted any relief in this writ petition.

9. Shri J.C.Vyas, contended that permission under Section 63 of the Act could not be given because there was deliberate suppression of fact that proceedings under sec.84(c) of the Act were pending before the Gujrat Revenue Tribunal. He further argued that if pendency of revision before the Tribunal would have been brought to

the notice of the respondent No.2 he would have refused to grant permission. It was also argued that it was obligatory for the respondent No.2 to inquire about R.T.S. proceedings under Sec.84(c) of the Act. In my opinion, no obligation was cast upon the respondent No.2 to enquire whether any revision was pending before the Revenue Tribunal or not. Similarly no obligation was cast upon the respondents No.3 & 4 to intimate the respondent No.2 that revision was pending before the Gujarat Revenue Tribunal and lastly the respondents No.3 & 4 factually could not have intimated the respondent No.2 regarding pendency of R.T.S. proceedings before the Gujarat Revenue Tribunal inasmuch as these respondents had no notice, when they moved application under Sec.63 of the Act, that any such revision application was filed by the petitioner before the Gujarat Revenue Tribunal. From the counter Affidavit it is clear that application under Sec.63 of the Act was moved on 10.4.1995 whereas on 28.6.1996 the tribunal ordered that the notice of the revision be issued and the date of hearing was fixed on 30.7.1997. Thus, if the notice of revision itself was issued on 28.6.1996 i.e. after application of respondents No.3 & 4 under Sec.63 moved on 10.4.1995, they could not have disclosed in the application that any such revision was pending. As such it cannot be said that the respondents No.3 & 4 had actively concealed the factum of pendency of revision before the Gujarat Revenue Tribunal. Thus, on this ground also the impugned order cannot be said to be invalid.

10. Further it cannot be said that the impugned order granting permission under Sec.63 was passed mechanically without application of mind by the respondent No.2. The order Annexure : D of the respondent No.2 shows that he had considered relevant factors required for granting permission and the permission was granted with certain conditions. It is, therefore, not a non-speaking order which can be lightly quashed.

11. The view taken in the case of RATNAPRABHA (supra) was subsequently followed by this Court in Special Civil Application No.5070/99 decided on 24.7.1999. There is then hardly any scope for taking different view than that has been taken by this Court earlier in these two cases.

12. Shri A.J.Patel, rightly contended that the petitioners on the other hand are guilty of suppression of material facts, namely, that they had accepted huge amount of consideration for executing Sale Deed in favour of the respondents No.3 and 4 and the said amount of consideration has not so far been disclosed. Shri

J.C.Vyas contended that execution of Sale Deed in favour of respondents No.3 & 4 is admitted by the petitioners, hence there is no concealment. However, in the writ petition the amount of consideration of Sale Deed is not disclosed. This suppression regarding the amount of sale consideration may not be very vital, but still it reflects upon bonafide conduct of the petitioners.

13. It may also be mentioned that the position of the respondents No.8 to 18 and 20 has been altered since then inasmuch as they raised major portion of the construction acting upon the permission granted under Sec.63 of the Act after the Sale Deed was executed in their favour. It will then be unjust and inequitable to stop further construction and hold that the permission under Sec.63 is invalid. The order to maintain status-quo passed in this petition on 8.11.1996, in these circumstances, is required to be vacated inasmuch as the Sale Deed in favour of the respondents No.8 to 18 and 20 is prima facie valid and requisite permission was obtained by the respondent No.3 and 4 under Sec.63 of the Bombay Tenancy Act before executing the Sale Deed in favour of the respondents No.9 to 18. The order to maintain status-quo passed by the Gujarat Revenue Tribunal can not invalidate the permission granted by the respondent No.2 under Sec.63 of the Act.

14. To sum up therefore it can be said that the petitioners after having sold the property to the respondents No.3 & 4 for a valuable consideration through registered Sale Deed have lost their right and interest in the land. As a consequence thereof they have also lost their right to challenge the permission granted to the respondents No.3 & 4 by the respondent No.2. Further, on merits the petitioners are guilty of concealment of material fact, namely, consideration for which they had executed the Sale Deed in favour of the respondents No.3 & 4 and lastly on merits also the impugned order of the respondent No.2 is neither illegal nor contrary to law. Consequently I do not find any merit in this petition which is liable to be dismissed.

The writ petition is dismissed with no order as to costs.

sd/-

Date : November 05, 1999 (D. C. Srivastava, J.)

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